

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

TIMOTHY DAVIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	CV 116-207
	)	
GREGORY MCLAUGHLIN,	)	
	)	
Respondent.	)	

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**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

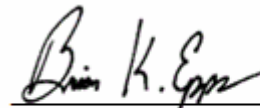
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Petitioner, currently incarcerated at Macon State Prison in Oglethorpe, Georgia, filed this § 2254 petition along with an application to proceed *in forma pauperis* (“IFP”) in the Northern District of Georgia on December 1, 2016. (Doc. nos. 1, 2.) Judge Alan J. Baverman transferred the case to this Court on December 14, 2016, as Petitioner was convicted in Richmond County. (Doc. no. 3.)

From an initial review of the petition, the Court concluded Petitioner was seeking a Certificate of Probable Cause to Appeal from the Georgia Supreme Court rather than habeas relief. (See doc. no. 6.) The Court therefore ordered Petitioner to notify it within twenty-one days whether he intended to file a federal habeas petition or rather filed an application for a certificate of probable cause to appeal in the wrong court. (Id. at 2.) The Court warned Petitioner if no response is timely received, the Court would presume he desired to have this case voluntarily dismissed and would recommend dismissal of the petition without prejudice. (Id.)

The twenty-one days has passed, and the Court has received no response from Petitioner. Accordingly, the Court the Court **REPORTS** and **RECOMMENDS** Petitioner's motion for leave to proceed IFP (doc. no 2) be **DISMISSED AS MOOT**, the § 2254 petition be **DISMISSED** without prejudice, and this civil action be **CLOSED**.

SO REPORTED and RECOMMENDED this 17th day of January, 2017, at Augusta, Georgia.

A handwritten signature in black ink, appearing to read "Brian K. Epps", is written over a horizontal line.

BRIAN K. EPPS  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA